IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 98 OF 2002

The Commissioner of Income-tax,
City-XXI, Mumbai Appellant

vs.

M/s. Indexco International Respondent

Mr. K. R. Chaudhary with Ms. S. V. Bharucha i/b. Mr. H. D. Rathod for the appellant.

Ms. V. B. Patel for the respondent.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12h August 2004

P.C.:

Heard.

2. In Commissioner of Income-tax v. Kantilal Chhotalal, 246 ITR 439, the Division Bench of this Court held thus:

> "In fact, by the proviso in clause (ba) to the Explanation, it is further provided that the expression "total turnover" shall have effect so as to exclude

> section 28 (iiia), (iiib) and (iiic) which refer to, inter alia, profits on sale of a licence granted under the Import (Control) Order, cash assistance, duty drawback, etc. This exclusion also shows that the Legislature clearly intended to exclude all receipts which have no nexus with sale proceeds from export activity. Hence, total turnover cannot include reassortment charges, labour charges, commission, interest, rent or receipts of similar nature. Therefore, total turnover will not include receipts like labour charges, reassortment charges, etc."

3. In view of the legal position laid down by the Division Bench of this Court in Kantilal Chhotalal (supra) the Income Tax Appellate Tribunal cannot be said to have erred in holding that indenting commission shall not form part of the total turnover while computing deduction under section 80HHC of the Income Tax Act, 1961.

4. No substantial question of law arises in this appeal.

5. Appeal is dismissed in limine.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)